



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-178997

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October 10, 1973

Bowman & Drussen, Incorporated  
511 Boonville  
Springfield, Missouri 65806

Attention: Mr. P. H. Anderson  
Contract Administration

Gentlemen:

Reference is made to your letter of August 15, 1973, and prior correspondence, protesting against the award of a contract to another concern under Invitation for Bids (IFB) No. DACW03-73-B-0124, issued on May 14, 1973, by the Corps of Engineers for installation of a re-oxygenation system at Table Rock Lake, White River, Missouri. For the reasons stated below, your protest is denied.

The General Provisions, Clause 24, included the Davis-Bacon Act requirement that wages be paid in accordance with. " \* \* \* the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof. \* \* \*" The Wage Determination page in the solicitation contained the notation "To be inserted by Amendment." Amendment No. 2, dated June 11, 1973, added the wage rates set forth in Department of Labor Determination No. 73-MO-189. The face sheet of this amendment made it clear that the amendment was to be acknowledged in the bid.

Bids were opened on June 21, 1973, at 2:30 p.m., and your bid at \$130,289.80, was low. The next low bid was from Paragon Mechanical, Incorporated, at \$157,700.

Upon examination of your bid the procuring activity found that you had failed to acknowledge Amendment No. 2. On June 21, 1972, you were advised that your bid could not be accepted because of your failure to acknowledge Amendment No. 2.

On June 22, 1973, you filed a protest with the procuring activity and with our Office against the rejection of your bid. Thereafter, Army determined that an award could not be delayed pending resolution of your protest and an award was made to Paragon Mechanical.

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You argue that your failure to acknowledge Amendment No. 2 was not intentional; that the amendment did not have an effect on price since you are required to pay higher wages than those set forth in the amendment under your current union agreements; and that, therefore, your failure to acknowledge the amendment should be treated as a minor informality. You point to the difference in your bid and the next low bid as a further reason for waiving your failure to acknowledge the amendment.

We have considered the arguments you have made in a number of our prior decisions. Thus we have held that the failure of a bidder to acknowledge an amendment incorporating a wage determination by the Secretary of Labor may not be waived on the basis that the bidder might be already paying the same or higher wage rates to its employees under agreements with labor unions. It has been our view that under such a bid the Government could not require the bidder to pay the prescribed minimum wages and therefore the bid is materially defective. See B-175752, June 7, 1972, and B-175936, June 20, 1972, copies enclosed; see also 40 U.S.C. 276(a).

Moreover, the failure to acknowledge the amendment may not be waived even if the failure to acknowledge was inadvertent. 47 Comp. Gen. 597 (1968). Also, the telegram which you sent after bid opening acknowledging the amendment may not be considered since bid responsiveness must be established as of the time of bid opening. 47 Comp. Gen. 597, 599 supra.

With respect to the savings that could be realized by an award to your firm, we have stated that the strict maintenance of the integrity of the competitive bidding system is infinitely more in the public interest than obtaining a pecuniary advantage in a particular case by violation of the rules. B-157894, November 30, 1965.

Finally, you have disagreed with the administrative version of certain discussions between your representatives and the procuring activity after bid opening relating to your reasons for failing to acknowledge Amendment No. 2. Since these discussions do not have any

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Significance with respect to the legal question of whether your bid was responsive, which, as indicated, must be established as of the time of bid opening, we do not find it necessary to further consider this aspect of your protest.

Sincerely yours,

Paul G. Dembling  
For the Comptroller General  
of the United States

Enclosures